

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 20 and 24 of the)	WT Docket No. 96-59
Commission's Rules -- Broadband)	
PCS Competitive Bidding and the)	
Commercial Mobile Radio Service)	DOCKET FILE COPY ORIGINAL
Spectrum Cap)	
)	
Amendment of the Commission's)	GN Docket No. 90-314
Cellular PCS Cross-Ownership Rule)	
To: The Commission		

REPLY COMMENTS OF TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys submits its reply comments in response to the numerous comments filed with regard to the Commission's Notice of Proposed Rulemaking released March 20, 1996 in the above-captioned proceeding ("NPRM").

* * *

We proposed in our comments to retain the Commission's cross-interest and spectrum cap restrictions, its competitive bidding rules for the D and E block auctions and its designated entity set-aside in the F block auction. These were all highly controversial decisions when first adopted and have had a profound impact in shaping the structure of wireless competition during the short period they have been in effect. By retaining them, the Commission will help to preserve the competitive balancing of incumbent and start-up market entry, to avoid disrupting business planning and commitments made in reliance on the operations of these require-

ments and to foster the early deployment of broadband PCS technologies.

The principal area where significant change in existing competitive bidding rules is needed concerns the rights of rural telephone companies as designated entities. In our comments, and as discussed below, the Commission now has a Congressional mandate to help create broadband PCS licensing opportunities for all rural telephone companies. With the F block auction tentatively scheduled for July, this is an urgent priority.

DISCUSSION

1. The Commission Should Retain its 40 MHz Broadband PCS Cap, its 20/10 Cellular Cross-interest Restriction and the 20% Attribution Standard for the 45 MHz Spectrum Cap.

Numerous commentors support retention of the Commission's 40 MHz broadband PCS, 20/10 cellular cross-interest restriction and 20% attribution standard for the 45 MHz spectrum cap. We agree that these requirements should be retained to foster competitive opportunities at this early stage of the implementation of broadband PCS implementation. Changing Commission requirements at this time will disrupt business planning and alliances during a crucial formative period of broadband PCS development, will introduce uncertainty about competitive entry opportunities disadvantaging new market entry, and could be the cause of litigation which ultimately disrupts and delays deployment of broadband PCS technologies.

2. The Definition of Rural Telephone Companies in Section 153(47) of the Act Should be Adopted for the F Block Auction.

We agree with ALLTEL, Auction Strategy, Conestoga Wireless and

GTE that the Commission should adopt the statutory definition of rural telephone company for purposes of its broadband PCS designated entity provisions. The new statutory definition should replace the existing language in Sections 1.2110 and 24.720(e) of the Commission's rules. The Commission's competitive bidding rules should also be modified to provide all rural telephone companies realistic opportunities to participate in the development of broadband PCS technologies.

Section 153(47) of the Act sets out for the first time a specific definition of the rural telephone companies which Congress intends to obtain special opportunities to hold broadband PCS licenses. The statutory definition departs significantly from the definition adopted in the Commission's rules in that it does not exclude rural telephone companies on the basis of the Commission's current 100,000 access line cap. In effect the statutory definition confirms the parity of the opportunities of all rural telephone companies under Section 309(j)(3) to serve rural America with advanced wireless technologies.

Commentors who want the Commission to retain its current definitions in Sections 1.2110 and 24.720(e) of its rules either misread or ignore the plain meaning of the statutory definition. On its face, the definition in Section 153(47) applies for the purposes of Section 309(j)(3) of the Act. There is no stated intent for this definition to apply only to sections of the Act other than Section 309(j)(3). Nor did Congress adopt any separate definition in Section 309(j)(3) which would create a special

definition for this section or otherwise state in the Conference Report for the 1996 Act that the statutory definition would not apply in Section 309(j).

The adoption of revised competitive bidding rules to afford all rural telephone companies parity of access to broadband PCS licenses is an urgent priority. For rural telephone companies who were ineligible to apply under the C Block auction rules, the only opportunity which these companies will have to bid for broadband PCS spectrum as designated entities will be in the F Block auction. For this reason, it is essential that the Commission's eligibility rules in Section 24.715 be modified to permit all rural telephone companies qualifying under the statutory definition to apply in what could be the Commission's last broadband PCS designated entity auction. Rural telephone companies should be permitted to apply in the BTAs where they operate local exchange facilities so that they can use existing wireless networks to provide PCS efficiently and expeditiously in rural areas.

The Commission should also extend installment payment options and bid credits to all rural telephone companies in the event entrepreneurs or small business have such options or credits under the F Block bidding rules. This is essential because the financial advantage conferred upon qualifying bidders with access to installment payments and bid credits virtually assures that only bidders with such preferences will prevail.¹ Conversely, withhold-

¹ The record in the C block auction confirms this point. Of all the applicants qualifying in this auction only two did not qualify as small
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ing such preferences removes any realistic opportunity for a bidder to obtain a license, which in the case of rural telephone companies is contrary to the Congressional mandate in Section 309(j)(3) of the Act.²

We believe that the Commission's first responsibility under Section 309(j)(3) is to devise competitive bidding rules to afford realistic opportunities for rural telephone companies to bid for F Block licenses. We also support expansion of the Commission's geographic partitioning to cover all rural telephone companies under the statutory definition. This change is a useful supplemental measure but should not be considered a substitute for licensing opportunities under competitive bidding preferences. For obvious reasons, the near term opportunity to bid for broadband PCS spectrum has far more impact in achieving Congressionally mandated objectives than a prospective and highly contingent opportunity to negotiate for a partitioned license. Also, if as the FCC staff has recently indicated, the Commission will soon be considering a possible expansion of eligibility to hold partitioned licenses, the unique value to rural telephone companies of partitioning rights will be materially diluted if not lost. The possible loss of this unique right to hold partitioned licenses is a further reason to

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businesses. Neither of these two remain in the auction at this time. The competitive edge given to small business under the Commission's preference rules eliminated the practical value of applying as an entrepreneur.

² Nor do we believe that this is unfair to small business bidders. The Commission has already successfully created opportunities for small business in its C Block auction rules. Twenty-five percent of all licensed broadband PCS spectrum will be held by small businesses after this auction is concluded. With only the F Block channels remaining to be licensed to designated entities, special measures must be taken to make sure rural telephone companies have reasonable opportunities to win PCS licenses.

adopt competitive bidding preferences for rural telephone companies to preserve licensing opportunities in compliance with Section 309(j)(3).

3. Installment Payment Options Should not be Given to Designated Entity Bidders in the D and E Block Auctions.

We agree with the commentors including AT&T Wireless, BellSouth, General Wireless, Sprint and U.S. West who oppose extending designated entity bidding preferences to D and E block licensing. The Commission made a difficult and controversial decision to set aside C and F block licenses for designated entities when the competitive bidding rules were first adopted. The opportunities for designated entity licensing "guaranteed" in this manner are fully responsive to statutory requirements. The Commission should retain its current bidding procedures for the D and E block auctions to avoid disruption to business planning, controversy and possible litigation. The D and E block auctions can be conducted in July with a minimum of controversy and delay if the Commission retains its existing auction rules for these channel blocks.

CONCLUSION

The Commission's goals to promote a broadly competitive marketplace, opportunities for rural telephone companies to deploy advanced PCS technology in their service areas and competitive parity for cellular providers to hold PCS licenses within their cellular service areas reflect a delicate balance of competing

interests. Except as required to meet the recent Congressional mandate supporting opportunities for all rural telephone companies, we believe the Commission's existing rules and policies should be retained to provide continuity and regulatory stability among these competing interests during this early stage of broadband PCS implementation. The only changes which should be made at this time are those required to provide to all rural telephone companies Congressionally mandated rights to bid competitively for F block licenses and to hold partitioned licenses.

Respectfully submitted,

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April 25, 1996

CERTIFICATE OF SERVICE

I, Judy Cooper, a legal secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Reply Comments" was sent by first class U.S. mail, postage prepaid, on this 25th day of April, 1996, to the offices of the following:

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